

• Steven M. Bessette  
Appl. No. 09/340,391  
May 10, 2005

Atty. Docket No. 4380-87

### REMARKS/ARGUMENTS

Claims 1, 6, 18, 19 and 24-26 are pending in the above-captioned patent application. Claims 2-5, 7-17, 20-23 and 27 have been canceled without prejudice or disclaimer of the subject matter they contain. Solely in an effort to obviate, and/or simplify, the issues on appeal and to advance prosecution, claims 1, 18, 19, 24, and 26 are amended to encompass infringing subject matter. No new matter has been added. Applicants do not acquiesce to the propriety of any of the Examiner's current or previous rejections and do not disclaim any subject matter to which Applicants are entitled. *Cf Warner Jenkinson Co. v. Hilton-Davis Chem. Co.*, 41 U.S.P.Q.2d 1865 (U.S. 1997). Further, Applicants reserve the right to prosecute the subject matter of any canceled claim in one or more continuation, continuation-in-part, or divisional applications.

Entry of the above amendment(s) is proper under 37 C.F.R. § 1.116 because the amendments: (a) place the application in condition for allowance (for the reasons discussed herein); (b) do not raise any new issues requiring further search and/or consideration (since the amendments amplify issues previously discussed throughout the prosecution); (c) do not present any additional claims without canceling a corresponding number of finally rejected claims; and (d) place the application in better form for appeal. The above amendment(s) were not earlier made because the issues raised and cited references applied in the final rejection were not previously of record. It is believed that the above claim amendments place this application in condition for allowance. Thus, entry is respectfully requested.

The Office Action rejects claims 25 and 26 under 35 U.S.C. 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. Solely in an effort to advance prosecution, Applicant has

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amended claims 25 and claim 26 to overcome this rejection. Applicant respectfully requests reconsideration and withdrawal of the rejection.

The Office Action rejects claims 6 and 26 under 35 U.S.C. 112, first paragraph, as allegedly failing to comply with the enablement requirement. In particular, the Office Action states that claim 26, which is directed to invertebrates, is not enabled by the written description. Solely in an effort to advance prosecution, claim 26 has been amended overcome this rejection. Applicant respectfully requests reconsideration and withdrawal of the rejection.

The Office Action rejects claims 1, 6, 18, 25 and 26 under 35 U.S.C. § 103(a) as being unpatentable over Lover et al. (U.S. Pat. No. 4,368,207) in view of Herrera et al. (U.S. Pat. No. 4,195,080). Applicant respectfully traverses this rejection.

Lover merely discloses the use of certain higher alcohols as toxicants for lice and/or their ova and to toxicant compositions containing such higher alcohols. Lover nowhere discloses or suggests compositions containing enzyme inhibitors, as required by the claimed invention. Herrera fails to remedy the deficiencies of Lover. Herrera merely discloses a composition comprising citrus juice essence oils as the active ingredient, pyrethrum and PBO. Herrera does not disclose a composition devoid of pyrethrum, nor the plant essential oils or enzyme inhibitors recited in the claims. Thus reconsideration and withdrawal of this rejection are respectfully requested.

The Office Action also rejects claims 19 and 24 under 35 U.S.C. § 103(a) as being unpatentable over Lover et al. (U.S. Pat. No. 4,368,207) in view of Herrera et al. (U.S. Pat. No. 4,195,080) and Casida (1973).

Lover does not disclose or suggest compositions containing the plant essential oils and enzyme inhibitors, let alone the enzyme inhibitors required by the claims 19 and 24. Herrera

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does not disclose or a composition devoid of pyrethrum and comprising the plant essential oils or enzyme inhibitors recited in the pending claims. Casida fails to remedy the deficiencies of Lover or Herrera. Casida essentially teaches away from the claimed invention by disclosing the use of **pyrethrum** extracts in combination with a synergist. Casida does not disclose a composition devoid of pyrethrum, as in the claimed invention. Reconsideration and withdrawal of this rejection are respectfully requested.

It cannot escape notice that Lover, Herrera and Casida, alone or improperly combined, do not disclose or suggest a pesticidal composition comprising a pesticidally-acceptable carrier and a pesticidally-effective active ingredient wherein the pesticidally-effective active ingredient consists of an effective amount of at least one plant essential oil compound selected from the group consisting of benzyl alcohol, eugenol and phenyl ethyl alcohol, and an effective amount of an enzyme inhibitor selected from the group consisting of piperonyl butoxide, N-(2-ethylhexyl)-bicyclo-(2,2,1)hept-5-ene 2,3-dicarboximide, and sesamex, as recited in the claims. Thus, the applied references do not teach or suggest the features required by the claims. Applicant respectfully requests reconsideration and withdrawal of these rejections.

### CONCLUSION

If anything further could be done to place the above-captioned patent application in better condition for allowance (i.e., via Examiner's Amendment), then please contact the undersigned attorney at the telephone number listed below.

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Please grant any extension(s) of time deemed necessary for entry of this communication.  
The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper filed hereafter) to Deposit Account No. 14-1140.

Respectfully submitted,

NIXON &amp; VANDERHYE P.C.

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## CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this document (including any paper referred to as being attached or enclosed) is being sent to the U.S. Patent and Trademark Office via facsimile transmission to (703) 872-9306 on the date indicated below, with a coversheet addressed to Commissioner for Patents, U.S. Patent and Trademark Office.

Date: May 10, 2005  
By: William F. Gadiano  
William F. Gadiano, Reg. No. 37,136